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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 ANSAR EL MUHAMMAD also  
11 known as CHEVAL WRIGHT,

12 Petitioner,

No. CIV S-04-1856 FCD JFM P

13 vs.

14 JEANNE WOODFORD, et al.,

15 Respondents.

ORDER

16 \_\_\_\_\_/  
17 Petitioner is a state prisoner proceeding through counsel with an application for a  
18 writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his 2001 conviction on  
19 charges of first degree murder, attempted second degree robbery, and second degree robbery,  
20 with true findings as to allegations of use of a firearm and that the murder was committed while  
petitioner was engaged in a robbery.

21 This action is proceeding on the first amended petition filed February 14, 2005.  
22 Therein, petitioner raises six claims, including a claim that his trial counsel was ineffective in,  
23 inter alia, failing to request that the trial court “admonish the jurors against engaging in improper  
24 contacts or other forms of misconduct” during an eleven day break in deliberations that began the  
25 day after jury deliberations started. This matter is before the court on petitioner’s motion for  
26 discovery pursuant to Rule 6 of the Rules Governing Section 2254 Cases in the United States

1 District Courts, by which petitioner seeks an order directing respondents to provide him with the  
2 name, addresses and telephone numbers of the trial jurors.

3 Rule 6(a) of the Rules Governing Section 2254 Cases in the United States District  
4 Courts authorizes a judge to permit discovery in a habeas corpus case “for good cause shown.”  
5 Rule 6(a), 28 U.S.C. foll. § 2254.

6 The Supreme Court has stated that Rule 6(a) “is meant to be  
7 ‘consistent’ ” with its holding in Harris v. Nelson, 394 U.S. 286,  
8 89 S.Ct. 1082, 22 L.Ed.2d 281 (1969), in which the Court held that  
9 “where specific allegations before the court show reason to believe  
10 that the petitioner may, if the facts are fully developed, be able to  
11 demonstrate that he is ... entitled to relief, it is the duty of the court  
12 to provide the necessary facilities and procedures for an adequate  
13 inquiry.” Bracy v. Gramley, 520 U.S. 899, 908-09, 117 S.Ct. 1793,  
14 138 L.Ed.2d 97 (1997) (quoting Harris, 394 U.S. at 300, 89 S.Ct.  
15 1082) (alteration in original). Likewise, we have held that a district  
16 court abused its discretion in not ordering Rule 6(a) discovery  
17 when discovery was “essential” for the habeas petitioner to  
18 “develop fully” his underlying claim. Jones [v. Wood], 114 F.3d  
19 [1002] at 1009 [(9<sup>th</sup> Cir. 1997)].

20 Pham v. Terhune, 400 F.3d 740, 743 (9<sup>th</sup> Cir. 2005).

21 Petitioner seeks the requested discovery in order to investigate facts relevant to  
22 the prejudice prong of the foregoing ineffective assistance of counsel claim. Petitioner was  
23 denied the requested discovery in state court on the ground that petitioner was “on a fishing  
24 expedition,” and respondents oppose the instant motion on the same ground. (Opposition to  
25 Petitioner’s Rule 6 Motion for Discovery, filed April 16, 2007, at 2.) Under Rule 6(a) of the  
26 federal habeas rules, respondents’ contention is without merit.

21 The record shows that petitioner’s trial commenced on June 4, 2001. The jury  
22 began deliberations on June 27, 2001. The following day, the jury was dismissed for an eleven  
23 day period over the July 4 holiday without any admonishment from the court to refrain from  
24 improper contacts or communications about the trial during the break. On July 9, 2001, the day  
25 they returned from the break, the jury returned a verdict against petitioner. These factual  
26 circumstances, combined with the fact that there is no way for petitioner to fully develop the

1 prejudice prong of his ineffective assistance of counsel claim without the requested juror  
2 information, renders the discovery “essential” and this court duty-bound to grant the motion.

3 In accordance with the above, IT IS HEREBY ORDERED that:

4 1. Petitioner’s April 2, 2007 motion for discovery is granted; and

5 2. Within thirty days from the date of this order petitioner shall seek the discovery  
6 authorized by this order; and

7 3. This matter is set for status conference on September 6, 2007 at 11:00 a.m. in  
8 Courtroom # 26.

9 DATED: June 14, 2007.

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12 UNITED STATES MAGISTRATE JUDGE

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